

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Jaap BAKKER et al.
SERIAL NO.: 10/561,759
FILED: July 28, 2006
TITLE: GUIDE, ASSEMBLED GUIDE AND DEVICE FOR
CONDITIONING PRODUCTS DISPLACEABLE
ALONG A GUIDE TRACK
Group/A.U.: 3651
Examiner: Kavel Singh
Conf. No.: 1638
Docket No.: P06937US0

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

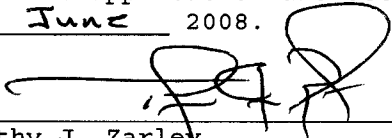
This is an appeal under 37 CFR 41.3 from the non final rejection of claims 1-7, 9-13 and 15-21 dated April 3, 2008.

I. Real Party In Interest:

The real party in interest of the instant appeal is Stork Townsend B.V., having an address of Industrielaan 63, Oss, Netherlands 5349 AE.

Certificate of Electronic Transmission

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via EFS-Web (United States Patent and Trademark Office's web-based patent application and document submission) on this 30th day of June 2008.



Timothy J. Zarley

II. Related Appeals and Interferences:

On January 9, 2008 an Appeal Brief was filed in response to a final office action on September 14, 2007. In response to the Appeal Brief a non-final action on April 3, 2008 was issued.

III. Status of the Claims:

Presently, claims 1-21 are pending in this application and appear as Appendix A of this Brief. Claims 8 and 14 are objected to as being dependent on a rejected base claim but would be allowable if rewritten in independent form. Claims 1-7, 9-13 and 15-21 are identified as the appealed claims.

IV. Status of Amendments:

No amendments have been made since the non final rejection of April 3, 2008.

V. Summary of Claimed Subject Matter:

Claims 1-21 relate to a guide for supporting a displaceable object having a plastic guide profile 30, over which displaceable objects can slide either directly or via a product carrier, and a support structure 32 supporting the guide profile 30, characterized in that the guide profile 30 is engaged at least at two spaced-apart positions by the support structure 32, at least one engaging position of which consists of a free support of guide profile 30 on support structure 32 such that the freely supporting side of guide profile 30 is displaceable relative to the support structure 32. See Page 1, lines 28-30; Page 6, lines 2-6; Fig. 5.

Claim 2 adds the limitation that the guide profile 30 is coupled rigidly on one side to support structure 32. *Id.*; see also Page 2, lines 3-6. Claim 3 adds the limitation that the guide profile 30 is provided with a three-dimensional contact surface 33 at the position where it supports freely on support structure 32. *Id.*; see also Page 2, lines 12-15. Claim 4 adds the limitation that support structure 32 is provided with a three-dimensional contact surface 34 at the position where guide profile 30 supports freely thereon. *Id.*

Claim 5 adds the limitation that the free support of guide profile 30 on support structure 32 is formed by a recess 33 in guide profile 30 in which an engaging part 34 of support structure 32 engages close-fittingly and displaceably. *Id.*; see also Page 2, lines 19-21. Claim 6 further limits claim 5, requiring that a free space is enclosed between engaging part 34 of support structure 32 and a part of the recess 33 on the side remote from the engaging part 34, in which recess 33 the engaging part 34 is axially displaceable. *Id.*; see also Page 2, lines 21-24. Claim 7 further limits claim 6, requiring that recess 33 with the engaging part 34 displaceable therein is formed such that the direction of displacement of engaging part 34 relative to recess 33 is at least substantially parallel to the guide surface. *Id.*; see also Page 2, line 32 - Page 3, line 1.

Claim 9 adds the limitation to claim 1 that guide profile 30 is manufactured from a high-molecular weight polyethylene, while claim 10 requires guide profile 30 to be metal. *Id.*; see also Page 3, lines 11-15. Claim 11 adds to claim 5 the addition limitation that engaging part 34 of support structure 32 and recess 33 in guide profile 30 are at least substantially cylindrical. *Id.*; see also Page 3, lines 17-18.

Claim 12 adds the limitation that guide profile 30 is provided on opposite sides with engaging positions. *Id.*, see also Page 3, lines 22-23. Claim 13 adds the limitation that a plurality of guide profiles 30 are mutually connected with a gap to each other. *Id.*; see also Page 3, lines 25-27. Claim 15 further limits claim 13, requiring that the guide profiles 30 are engaged by a single support structure 32, while claim 16 limits claim 13 by requiring that guide profiles form a helical guide track 22. *Id.*; see also Page 3, line 32 - Page 4, line 2; Fig. 4.

Claim 17 depends from claim 13, and further requires a displacing means for displacing products along the plurality of guide profiles 30, a housing 23 at least partially enclosing the plurality of guide profiles 30 and the displacing means, and conditioning means for regulating the atmosphere in housing 23. *Id.*; see also Page 4, lines 7-11; Fig. 4.

Claim 18 adds to claim 17 the limitation that the conditioning means comprise temperature-regulating means. *Id.*; see also Page 4, lines 11-12. Claim 19 adds to claim 17 the limitation that the assembled plurality of guide profiles 30 comprises a vertically oriented, helical conveyor track 22 with a housing 23 placed therearound. *Id.*; see also Page 4, lines 12-14. Claim 20 depends from claim 19, and further requires that a rotatable core be placed in the helical conveyor track 22. *Id.*; see also Page 4, lines 14-15. Claim 21 adds to claim 17 the limitation that the displacing means comprise a driven endless conveyor track. *Id.*; see also Page 4, lines 15-18.

VI. Grounds of Rejection to be Reviewed on Appeal

The Examiner has rejected claims 1-7, 9-13, 15-17 and 19-21 under 35 USC § 102(b) as anticipated by US Pat No 4,637,529 to Tarlton et al. Additionally, the Examiner has rejected claim 18 as obvious under 35 USC § 103(a) over Tarlton et al. in view of US Pat No 1,651,912 to Thompson. For purposes of this Brief, the § 103 rejections have been grouped and are being collectively addressed.

VII. Argument

1. Rejection of Claims 1-7, 9-13, 15-17 and 19-21 under 35 USC § 102(b)

Claims 1-7, 9-13, 15-17 and 19-21 are rejected under 35 USC § 102(b) as being anticipated by Tarlton et al. Anticipation under § 102(b) "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed.Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 USPQ2d 1292 (Fed.Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed.Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571, 7 USPQ2d 1057, 1064 (Fed.Cir. 1988)).

"The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence

was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed.Cir. 2002); and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed.Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 USPQ2d 1618, 1624 (Fed.Cir. 1996).

Claim 1 requires, *inter alia*, "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier" (emphasis added). US Pat No 4,627,529 to Tarlton et al. does not teach this limitation. Tarlton et al. instead teaches an "outer guide 42 which extends about the spiral conveying path." '529 at Col. 3, lines 37-38.

Most notably, Examiner has reasoned that "[t]he guide (42) provides the path for the conveying surface (26) to slide through." Final Office Action at Page 2 (emphasis added). Appellant cannot agree. Outer guide 42 is merely "an outer restraint for guiding the conveyed products." '529 at Col. 3, lines 38-39 (emphasis added). In other words, under the teaching of Tarlton et al., conveyed objects will follow the path of the conveyor, not the guide.

Claim 1 also in part requires "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via product carrier." Tarlton is silent as to what the material is being used for the support rod 42 and specifically whether the support rod is made of plastic or not. As a result anticipation is not presented and the rejection is overcome.

Claim 1 also requires in part "characterized in that the guide profile is engaged at least at two spaced apart

positions by the support structure." The office action does not present a guide profile that is engaged at least at two spaced apart positions by a support structure and thus a *prima facie* case of obviousness is not presented. Instead, the office action considers support rod 42 as the guide profile and bracket 32 as the support structure. As shown in Fig. 5 the rod 42 is not engaged at two spaced apart positions by the brackets 32 and instead the support rod 42 extends through member 34. Thus, the item identified as the guide profile is not engaged in two spaced apart positions by the item identified as a support structure and thus a *prima facie* case of obviousness has not been presented. Thus, Appellant respectfully requests reversal regarding the rejection.

Claim 1 in part requires "at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure." This structure is not taught by the Tarlton reference. The final office action asserts that bracket 32 is the support structure. Bracket 32 is a unitary member comprising a central tubular member 34 secured at opposite ends to opposed U-shaped flange members 36, 38 with the flanges facing each other so as to provide support for a conveyor. (Col. 3, lines 24-33). A support rod 42 extends through member 34 and is secured at one end to core 10. (Col. 3, lines 28-38). Thus, the bracket 32 does not support the rod 42, or present a freely supporting side of a guide profile that is displaceable to the bracket. Thus, again this limitation is not met and Appellant respectfully requests reversal of the rejection. Additionally claims 2-5, 9-13, 15-17 and 19-21 depend on claim 1 and for at least this reason

are considered in allowable form and thus reversal is requested.

2. Rejection of Claim 18 under 35 USC § 103(a)

Claim 18 depends from claim 1. For the reasons set forth above with respect to the rejection of claim 1 under 35 USC § 102(b), and incorporated by reference as if fully set forth herein, Tarlton et al. does not teach all of the limitations of the base claim. As respects claim 18, Thompson does not cure Tarlton et al., as Thompson, directed to a cooling can track, does not teach a plastic guide profile having a guide surface over which displaceable objects can slide.

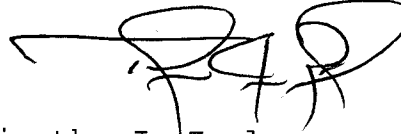
In order to establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In *re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); see also *In re Wilson*, 57 CCPA 1029, 1032 (1970) ("All words in a claim must be considered in judging the patentability of that claim against the prior art.") In the instant case, the cited references do not, individually or in combination, teach all of the limitations of the rejected base claim.

Because the Examiner has failed to establish a *prima facie* case of obviousness, the Examiner's rejection of claim 18 cannot stand, as a matter of law. Appellant requests that these rejections be withdrawn. Thus, a *prima facie* case of anticipation or obviousness has not been made in this application and Appellant respectfully requests reversal of all rejections.

Payment is included herewith. No other fees or extensions of time are believed to be due in connection with this response; however, consider this a request for any fee or

extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJZ', with a large, stylized flourish extending from the end.

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- TJZ/JLH/bjs -

Attachments: Appendices

VIII. Claims Appendix

1. Guide for supporting a displaceable object, comprising:
 - a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier, and
 - a support structure supporting the guide profile,characterized in that the guide profile is engaged at least at two spaced-apart positions by the support structure, at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure.
2. Guide as claimed in claim 1, characterized in that the guide profile is coupled rigidly on one side to the support structure.
3. Guide as claimed in claim 1, characterized in that the guide profile is provided with a three-dimensional contact surface at the position where it supports freely on the support structure.

4. Guide as claimed in claim 1, characterized in that the support structure is provided with a three-dimensional contact surface at the position where the guide profile supports freely thereon.

5. Guide as claimed in claim 1, characterized in that the free support of the guide profile on the support structure is formed by a recess in the guide profile in which an engaging part of the support structure engages close-fittingly and displaceably.

6. Guide as claimed in claim 5, characterized in that a free space is enclosed between the engaging part of the support structure and a part of the recess on the side remote from the engaging part, in which recess the engaging part is axially displaceable.

7. Guide as claimed in claim 6, characterized in that the recess with the engaging part displaceable therein is formed such that the direction of displacement of the engaging part relative to the recess is at least substantially parallel to the guide surface.

8. Guide as claimed in claim 5, characterized in that the tight fit of the engaging part of the support structure in the recess in the guide profile leaves free a slotted space between the engaging part and the inside of the recess of a maximum of 3 mm, preferably less than 1 mm.

9. Guide as claimed in claim 1, characterized in that the guide profile is manufactured from a high-molecular polyethylene.

10. Guide as claimed in claim 1, characterized in that the support structure is manufactured from metal.

11. Guide as claimed in claim 5, characterized in that the engaging part of the support structure and the recess co-acting therewith in the guide profile are at least substantially cylindrical.

12. Guide as claimed in claim 1, characterized in that the guide profile is provided on opposite sides with engaging positions.

13. Assembled guide provided with a plurality of mutually connecting guides as claimed in claim 1, wherein a plurality

of guide profiles are placed connecting with a gap to each other.

14. Assembled guide as claimed in claim 13, characterized in that the gap between the profiles is between 5 and 35 mm at atmospheric temperature.

15. Assembled guide as claimed in claim 13, characterized in that the plurality of profile parts are engaged by a single support structure.

16. Assembled guide as claimed in claim 13, characterized in that the plurality of profiles forms a helical guide track.

17. Device for conditioning products displaceable along a guide track, comprising:

- an assembled guide as claimed in claim 13,
- displacing means for displacing the products for conditioning along the guide,
- a housing at least partially enclosing the assembled guide and the displacing means, and
- conditioning means for regulating the atmosphere in the housing.

18. Device as claimed in claim 17, characterized in that the conditioning means comprise temperature-regulating means.

19. Device as claimed in claim 17, characterized in that the assembled guide comprises a vertically oriented, helical conveyor track with a housing placed therearound.

20. Device as claimed in claim 19, characterized in that a rotatable core is placed in the helical conveyor track.

21. Device as claimed in claim 17, characterized in that the displacing means comprise a driven endless conveyor track.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None